

## **DISCUSSION**

Upon entry of the present amendment, Claims 1-6 are pending in the application, of which, Claim 1 is independent.

The above-identified Office Action has been reviewed, the references carefully considered, and the Examiner's comments carefully weighed. In view thereof, the present Amendment is submitted. It is respectfully submitted that by the present amendment, all bases of rejection set forth in the Office Action have been traversed and overcome. Accordingly, reconsideration and withdrawal of each of the rejections of record is respectfully requested.

### **Amendments Presented**

Claims 1-2 have been amended herein to more particularly point out and distinctly claim the subject matter which applicant regards as the invention. For example, a number of minor informalities in the claims have been corrected, and the alternative "or" language of claim 2 has been deleted.

New claims 3-6 have also been added by the present amendment. Support for new claims 3-6 can be found in paragraphs 19, 29, 32 and 55 of the specification, among other areas.

The specification has been amended to correct several minor grammatical and spelling errors, and to provide proper antecedent basis for terminology now used in the claims. It is submitted that FRP is a well-known acronym for fiber-reinforced plastic. It is respectfully submitted that no new matter has been added by these amendments, since all of the subject matter thereof was expressly or inherently disclosed in the specification as originally filed.

### **35 USC 103 Issues**

Claim 1 stands rejected under 35 USC 103 as being unpatentable over Watanabe et al in view of Takashima. The Office Action states that Watanabe et al discloses a tank, a support

frame for holding the tank horizontally, and an outlet valve. Takashima is provided to show that it is well known to provide openings at either end of the tank. Therefore, it would be obvious to provide aligned holes on the tank of Watanabe in view of the teachings of Takashima.

Claim 2 stands rejected under 35 USC 103 as being unpatentable over Watanabe et al in view of Takashima and further in view of Kay. The office Action states that it would have been obvious to modify the tank of Watanabe to include a pin and pin hole formed body as taught by the pin 69 and body 65 of Kay.

#### Applicant's Response

Applicant respectfully traverses such rejections, based upon the following remarks.

With respect to claim 1, Watanabe et al attaches the cylinder to the support frame *before* placing the assembly into the vehicle and securing the frame to the floor (Column 5, Lines 55-65). Thus, there would not be a need for an alignment pin if the assembly is completed before the tank is placed in the vehicle. In addition, none of the prior art teaches providing an alignment pin on the support frame as set forth in claim1. Kay fails to show a support frame to hold the tank. The pin hole identified in the Office Action is a petcock for draining water, the pin hole body is a cleanout plug and the outer shell is the bottom cap. It is respectfully submitted that Kay is non-analogous art since it does not relate to retaining a tank on a support frame in a vehicle.

It is respectfully submitted that the proposed combination would improperly change the principle of operation of Kay and make Kay unsatisfactory for its intended purpose since the water would no longer be capable of draining from the petcock.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349

(CCPA 1959). If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Watanabe's cylinder 6 is very distinct from Takashima's modern pressure vessel in many respects, including the fact that Watanabe includes a single gas inlet/outlet valve 14 at only one end of the cylinder, unlike the Takashima's vessel having identical domed end portions with threaded bosses at opposite ends of the vessel. Watanabe's cylinder includes a flat supporting surface on the end opposite the valve 14, unlike Takashima's vessel having identical domed end portions at opposite ends thereof. Watanabe is not concerned with manufacturing his cylinder 6 from an inner airtight liner and an outer FRP shell, unlike Takashima. Quite simply, given that Watanabe's pressurized fuel cylinder is so very structurally distinct from Kay's fuel-water liquid separation tank, and certainly has no need for a cleanout plug at a lower end thereof, persons of ordinary skill in the art would never consider the proposed modification to be obvious.

#### The Standard for Rejection under 35 USC 103

In order to determine obviousness as a legal matter, four factual inquiries must be made concerning: 1) the scope and content of the prior art; 2) the level of ordinary skill in the art; 3) the differences between the claimed invention and the prior art; and 4) secondary considerations of nonobviousness, which in case law is often said to include commercial success, long-felt but unresolved need, failure of others, copying, and unexpected results. *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459, 467 (US 1966); *Miles Labs v. Shandon*, 997 F.2d 870, 27 USPQ2d 1123, (Fed. Cir. 1993).

The U.S. Supreme Court has recently said that "[A] patent composed of several elements is not proved obvious merely by demonstrating that each element was,

independently, known in the prior art. . . . Inventions usually rely upon building blocks long since uncovered, and claimed discoveries almost necessarily will be combinations of what, in some sense, is already known. **KSR v. Teleflex**, 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (S.Ct.2007)

Applicant respectfully suggests that an Examiner must provide a convincing reason why he or she feels that it would be obvious to combine the elements of the cited references in the fashion claimed by applicant. “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in **KSR v. Teleflex**, *supra*.)

The U.S. Supreme Court has also stated that a factfinder should be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. See **Graham**, 383 U. S., at 36 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight”). **KSR v. Teleflex**, *supra*.

Applicant respectfully submits that the Examiner has not provided a convincing or persuasive reason why it would be appropriate to combine the references in the manner suggested by the Examiner, and respectfully points out that even if the references are hypothetically combined, for the sake of argument, the combination fails to produce applicant’s invention as claimed.

Since the prior art relied upon in the Office Action fails to address the problem of aligning a tank with a support frame, it is respectfully submitted that there is no motivation for

the proposed combination of references.

New claims 3-6 are dependent from claim 1 and further define the subject matter applicant regards as the invention. If an independent claim is nonobvious under **35 U.S.C. 103**, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, Applicant respectfully submits new claims 3-6 are also non-obvious with respect to the prior art.

Applicant respectfully submits that the differences between the claimed invention and the cited references are substantial and significant, and therefore, applicant's invention is non-obvious as compared to the respective teachings of the references.

### **Conclusion**

Based on all of the foregoing, applicant respectfully submits that all of the rejections set forth in the Office Action have been overcome, and, as presently amended, all of the pending claims are believed to be allowable over all of the references of record, whether considered singly or in combination. Applicant respectfully requests reconsideration and withdrawal all of the rejections of record, and allowance of the pending claims.

It is applicant's contention that no possible reading of the references, either singly or in any reasonable combination, can be viewed as teaching applicant's claimed invention.

If any issues remain unresolved, or if the Examiner feels that the prosecution of the present application could be advanced by a telephone discussion, the applicant respectfully requests that the Examiner telephonically contact the applicant's undersigned representative, to expeditiously resolve any such issues remaining in the prosecution of the application.

Favorable consideration is respectfully requested.

Respectfully submitted,

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